

## **TITLE XII**

### **DECISION WITHOUT TRIAL**

#### **RULE 120. JUDGMENT ON THE PLEADINGS**

**(a) General:** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

**(b) Matters Outside Pleadings:** If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

## **RULE 121. SUMMARY JUDGMENT**

**(a) General:** Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial.

**(b) Motion and Proceedings Thereon:** The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

**(c) Case Not Fully Adjudicated on Motion:** If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be concluded accordingly.

**(d) Form of Affidavits; Further Testimony; Defense Required:** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

**(e) When Affidavits Are Unavailable:** If it appears from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify such party's opposition, then the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. If it appears from the affidavits of a party opposing the motion that such party's only legally available method of contravening the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, then such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

**(f) Affidavits Made in Bad Faith:** If it appears to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or for the purpose of delay, then the Court may order the party employing them to pay to the other party the amount

of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

## **RULE 122. SUBMISSION WITHOUT TRIAL**

<sup>1</sup>**(a) General:** Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way) may be submitted at any time after joinder of issue (see Rule 38) by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court.

**(b) Burden of Proof:** The fact of submission of a case, under paragraph (a) of this Rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

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<sup>1</sup>The amendments are effective as of August 1, 1998.

### **RULE 123. DEFAULT AND DISMISSAL**

**(a) Default:** If any party has failed to plead or otherwise proceed as provided by these Rules or as required by the Court, then such party may be held in default by the Court either on motion of another party or on the initiative of the Court. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions (see, e.g., Rule 104) as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

**(b) Dismissal:** For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against any party any issue as to which such party has the burden of proof, and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

**(c) Setting Aside Default or Dismissal:** For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

**(d) Effect of Decision on Default or Dismissal:** A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

## **RULE 124. VOLUNTARY BINDING ARBITRATION**

**(a) Availability:** The parties may move that any factual issue in controversy be resolved through voluntary binding arbitration. Such a motion may be made at any time after a case is at issue and before trial. Upon the filing of such a motion, the Chief Judge will assign the case to a Judge or Special Trial Judge for disposition of the motion and supervision of any subsequent arbitration.

**(b) Procedure:** (1) *Stipulation Required:* The parties shall attach to any motion filed under paragraph (a) a stipulation executed by each party or counsel for each party. Such stipulation shall include the matters specified in subparagraph (2).

(2) *Content of Stipulation:* The stipulation required by subparagraph (1) shall include the following:

- (A) a statement of the issues to be resolved by the arbitrator;
- (B) an agreement by the parties to be bound by the findings of the arbitrator in respect of the issues to be resolved;
- (C) the identity of the arbitrator or the procedure to be used to select the arbitrator;
- (D) the manner in which payment of the arbitrator's compensation and expenses, as well as any related fees and costs, is to be allocated among the parties;
- (E) a prohibition against ex parte communication with the arbitrator; and
- (F) such other matters as the parties deem to be appropriate.

(3) *Order by Court:* The arbitrator will be appointed by order of the Court, which order may contain such directions to the arbitrator and to the parties as the Judge or Special Trial Judge considers to be appropriate.

(4) *Report by Parties:* The parties shall promptly report to the Court the findings made by the arbitrator and shall attach to their report any written report or summary that the arbitrator may have prepared.

<sup>1</sup>(5) *Other Methods of Resolution:* Nothing contained in this Rule shall be construed to exclude use by the parties of other forms of voluntary disposition of cases, including mediation.

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<sup>1</sup>New subparagraph (5) is effective as of July 1, 1990.